



DONALD L. WOLFE, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: **W-0**

October 31, 2006

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ANTELOPE VALLEY  
PIPELINE PARTICIPATION AGREEMENT FOR THE PURCHASE OF WATER UNITS  
UNDER AGREEMENT NO. 62819  
SUPERVISORIAL DISTRICT 5  
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY  
OF THE LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40,  
ANTELOPE VALLEY:**

Execute the enclosed Amendment No. 3 of Agreement No. 62819 between  
Eastside Well Project Nos. 54 and 55, Inc., and the Los Angeles County  
Waterworks District No. 40, Antelope Valley.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of this action is to allow the District to purchase water units under existing Agreement No. 62819 (enclosed) between Eastside Well Project Nos. 54 and 55, Inc., and the District to fund the construction of the remainder of one mile of water transmission line. Agreement No. 62819 authorized Eastside Well Project Nos. 54 and 55, Inc., to finance and construct approximately 11 miles of 36-inch-diameter

water transmission line and other appurtenances within the northern area of the City of Lancaster. Upon completion and transfer of the project to the District, Agreement No. 62819 will be terminated.

**Implementation of Strategic Plan Goals**

This action is consistent with the County Strategic Plan Goal of Service Excellence by allowing us to provide better water service to the District's customers within the City of Lancaster.

**FISCAL IMPACT/FINANCING**

This action will have no impact on the County's General Fund.

The total amount for this Amendment will not exceed \$2,600,000. There are sufficient funds available in Fiscal Year 2006-07 Waterworks District No. 40, Antelope Valley, Accumulative Capital Outlay Fund (N64) to fund this action.

**FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The enclosed Agreement has been reviewed by County Counsel and approved as to form.

**ENVIRONMENTAL DOCUMENTATION**

A Negative Declaration for the entire project was prepared by the District and certified by your Board on April 24, 1990.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**


There will be no impact on current County services or projects during the performance of the recommended action.

The Honorable Board of Supervisors  
October 31, 2006  
Page 3

**CONCLUSION**

Please return one adopted copy of this letter and two originals of the adopted Agreement to Public Works, Waterworks and Sewer Maintenance Division.

Respectfully submitted,

*for*   
DONALD L. WOLFE  
Director of Public Works

GE:jtz  
BDL2247

Enc.

cc: Chief Administrative Office  
County Counsel

**AMENDMENT NO. 3 TO EASTSIDE WELL PROJECT NOS. 54 AND 55, INC.  
PIPELINE AGREEMENT NO. 62819 BY AND BETWEEN LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40, ANTELOPE VALLEY  
AND EASTSIDE WELL PROJECTS NOS. 54 AND 55, INC.**

This Amendment No. 3 to Agreement No. 62819 (the "Amendment 3") is made between Eastside Well Project Nos. 54 and 55, Inc., a California Corporation (the "Builder"), and Los Angeles County Waterworks District No. 40, Antelope Valley, a public waterworks district formed pursuant to Division 16 of the State Water Code (the "District") (the Builder and the District, each a "Party" and collectively, the "Parties") on \_\_\_\_\_, 2006.

RECITALS

WHEREAS, the District entered into Agreement No. 62819 with the Builder on April 24, 1990, which was subsequently amended on June 30, 1992, as Amendment No. 1, and on April 4, 2000, as Amendment No. 2 (Agreement No. 62819, together with Amendment Nos. 1, 2, and 3, collectively, the "Agreement"), which allows the Builder to finance and construct a 36-inch-diameter transmission water main along the alignment as described in Agreement; and

WHEREAS, the Agreement allows the Builder to oversize the Project to provide excess capacity beyond what is needed to provide water to the Builder's development; and

WHEREAS, the Agreement allows the Builder to sell water units (the "Water Units") to others seeking to obtain potable water service from the District (collectively, the "Participants"); and

WHEREAS, the Water Units represent financial participation by Participants in the oversizing of the Project's capacity to transmit water within the water system; and

WHEREAS, under the terms of the Agreement, funds obtained through the sale of Water Units are deposited in the Escrow Account established pursuant to Section 2.2 on the Agreement; and

WHEREAS, the Water Units may be used to obtain partial credits against the District's Capital Improvement Charges per the Rules and Regulations of the Los Angeles County Waterworks Districts (the "Rules and Regulations"); and

WHEREAS, Participants nonetheless remain subject to the District's Water Reliability Charges and all provisions under the Rules and Regulations; and

WHEREAS, the Builder applies the funds collected from the sale of Water Units to finance and construct portions of the Project; and

WHEREAS, the remaining portion of the Project is aligned approximately from Avenue H and 20th Street East south along 20th Street East to Avenue I within the City of Lancaster (the "Remaining Project") connecting both ends of the existing 36-inch-diameter water transmission pipelines; and

WHEREAS, Frontier Homes, a third-party private developer, and other potential participants (collectively the "Remaining Project Participants") desire to purchase Water Units to fund the completion of the Remaining Project; and

WHEREAS, the District will purchase 1,300 units (the "District's Water Units") by contributing \$2,600,000 into the Escrow Account (as defined below), which amount the Builder shall also apply to fund the remaining financing needed for the completion of the Remaining Project.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties, it is hereby agreed as follows:

1. BUILDER AGREES:

- a. All proceeds from the sale of Water Units under the terms of the Agreement, including Water Units sold to the Remaining Project Participants and all funds collected from the District, must be deposited into the Escrow Account.
- b. To contract with a licensed contractor and use the funds from the Escrow Account to pay for the construction of the Remaining Project and to do all things necessary to complete the Remaining Project pursuant to all applicable laws, plans, and specifications that were approved by the District (hereinafter referred to as PLANS).
- c. To obtain and maintain all necessary State, local, or other needed regulatory approvals or applicable permits and environmental documents (collectively "Permits"), including, without limitation, performing all acts required by or in connection with the requirements of the California Environmental Quality Act, for the completion of the Project and its operation until the Transfer of Ownership (as defined below).
- d. To notify District 48 hours in advance of the start of construction of Remaining Project so that the District may furnish an inspector to inspect construction of Remaining Project. Notwithstanding the foregoing, the inspection shall be for the sole benefit of the District and any inspection or any approvals of the Plans or the Remaining Project by the District will not be deemed to void or diminish any warranty herein or to relieve the Builder of any obligation in this Agreement, including, without limitation, to release or indemnify any Indemnitee and construct all aspects of the Project

pursuant to Plans to meet industry standards in the design or construction of the Project without defecting all.

- e. To complete the construction and completion of the Remaining Project pursuant to Plans to the District's satisfaction and immediately upon acceptance of the Remaining Project by the District to execute and record in the Official Records of the Los Angeles County Recorder, a Deed in the form attached hereto as Exhibit A to transfer fee to the Remaining Project to the District ("Transfer of Ownership") of the Remaining Project to the District, all within one (1) year from the execution of this Agreement.
- f. To remain fully responsible for the operation of the Project until Transfer of Ownership. The Builder shall be responsible for any shortfall in the Escrow Account needed to complete the Remaining Project.
- g. To furnish for approval to the District, within 60 days of completion of the construction of Remaining Project to the District's satisfaction, a final accounting of the actual cost (the "Final Accounting") and a reproducible set of the as-built drawings of the Remaining Project.
- h. To seek the Administrative Fee, as defined in the Agreement, upon  
1) completion of the Remaining Project to the District's satisfaction  
2) approval of the Final Accounting by the District, and 3) execution of the Transfer of Ownership.
- i. To cause the transfer of all remaining funds from the Escrow Account after the Transfer of Ownership, if any, to the District.
- j. In addition to and notwithstanding any other indemnity under this Amendment No. 3 or the Agreement, and without affecting and notwithstanding any warranties or insurance in favor of the District under any other provision in this Amendment No. 3 or the Agreement, the Builder shall release, indemnify, defend (with counsel that the District may select, at District's sole and absolute discretion), protect and hold harmless the District and the County of Los Angeles and its special Districts (as third-party beneficiaries), their Supervisors, officers, employees, agents, successors, and assigns (collectively, "Indemnitees" or singularly, "Indemnatee") from and against all claims, damages (including, without limitation, special and consequential damages), including punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal and administrative proceedings, interest, fines, charges, penalties and expenses (including, without limitation, attorneys, engineers, consultants, and expert witness fees and costs) of any kind whatsoever paid, incurred, suffered by, or asserted against any Indemnatee (collectively, the "Loss"),

directly, or indirectly arising from or attributable to: i) installation or construction of any portion of the Project; ii) any lien or encumbrance, including mechanics' liens resulting from work performed to construct the Project; iii) the operation of any portion of the Project prior to Transfer of Ownership; iv) any act of negligence or willful misconduct of the Builder; and v) the presence or alleged presence of any Hazardous Materials either: a) caused by the Builder or its agents on or in the immediate vicinity of the Project or on any property transferred by Builder to the District; or b) present on or in the vicinity of the Project or on any property transferred by the Builder to the District on or prior to the date of Transfer of Ownership. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County of Los Angeles, the State of California, a regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §13-17); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and California Health and Safety Code Section 25364. The Builder grants the foregoing release in favor of the Indemnitees notwithstanding and waiving the Builder's rights under California Civil Code 1542, which states: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT

KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.” The provisions of this Section shall survive the termination or expiration of this Agreement.

In addition to any remedy of the District available under this Amendment No. 3 or the Agreement, under law, or in equity, the Builder shall obtain warranties of one (1) year in duration, from Transfer of Ownership, from all contractors performing work on the Project and from their suppliers of material, pumps, pipelines, and equipment for repair or replacement of all such work or materials. The warranties shall inure to the benefit of Builder during the construction of the Project and to the benefit of District upon Transfer of Ownership of the Project. In addition to the foregoing warranties from contractors or suppliers, and also in addition to any remedy of the District available under law or in equity, the Builder will be obligated to reimburse the District for the repair or replacement, at the District's sole and absolute discretion, of any defective portion of the Project. The provisions of this Section shall survive the termination or expiration of this Agreement.

2. DISTRICT AGREES:

- a. To purchase 1,300 Water Units by depositing into the Escrow Account the sum of two million six hundred thousand dollars (\$2,600,000) (the “District's Share”).
- b. To pay the District's Share into the Escrow Account within 60 days of receipt of a written cost estimate for the Remaining Project from the Builder, in a form acceptable to the District and in accordance with the Agreement.
- c. To apply Water Units as partial credits in an amount equal to two thousand dollars (\$2,000) per Water Unit against the District's Capital Improvement (Acreage) Charge and the District's Capital Improvement (Tank Capacity Unit) Charge under the Rules and Regulations.

3. IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. The District's Share of the Remaining Project is limited to the sum of two million six hundred thousand dollars (\$2,600,000).
- b. The District shall have the right to review and approve the Final Accounting and verify the accuracy and validity of any invoices associated with Remaining Project.



- c. Except with regard to provisions that shall survive the termination of the Agreement, the Agreement shall terminate upon the Transfer of Ownership and upon approval of the Final Accounting for the Remaining Project.
- d. Except as provided herein, this Agreement is intended solely for the benefit of the Builder and the District, not any third parties.
- e. This Agreement, as amended, together with all attachments and exhibits contain the entire agreement and understanding between the Parties concerning the subject matter hereto and supersede and replace any and all prior or contemporaneous written or oral negotiations, proposed agreements, or agreements concerning that subject matter. There are no representations to induce consent to this Agreement other than those expressly contained in the Agreement, as amended.
- f. This Agreement, as amended, is not assignable to any third party without the express written consent of both parties, at their sole and absolute discretion.
- g. In the event any portion of the Agreement is found invalid, illegal, or unenforceable, such portion shall be severed from the Agreement, the remaining provisions will not be affected unless their enforcement under the circumstances would be unreasonable, inequitable, or would otherwise frustrate the purposes of the Agreement. The Parties will negotiate in good faith to replace the severed portion of the Agreement with a comparable valid provision.
- h. Each representative of the Parties affixing his or her signature below represents and warrants that he or she has read and understood the Agreement, has had opportunity to seek legal counsel, and has the full legal authority to bind his or her respective Party to all of the terms, conditions, and provisions of this Agreement, that his or her respective Party has the full legal right, power, capacity, and authority to enter into this Agreement and perform all of the obligations herein, and that no other approvals or consents are necessary from his or her respective Party in connection therewith.
- i. The District will have the right to retire, resell, or otherwise dispose of the District's Water Units in any manner as the District determines appropriate, in the District's sole and absolute discretion, without any obligation to the Builder of any nature whatsoever.

- j. Without waiving any of the District's rights under the law, in equity or under the Agreement, the District shall have the option, at its sole discretion, to terminate the Agreement upon 30 days with written notice to the Builder following the Builder's breach of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized, by EASTSIDE WELL PROJECT NOS. 54 and 55, INC. on \_\_\_\_\_, 2006, and by the LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ANTELOPE VALLEY, on \_\_\_\_\_, 2006.

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40, ANTELOPE VALLEY

ATTEST:

SACHI A. HAMAI  
Executive Officer of the  
Board of Supervisors of  
the County of Los Angeles

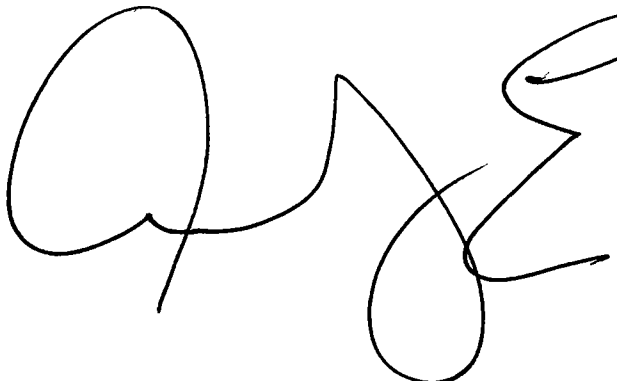
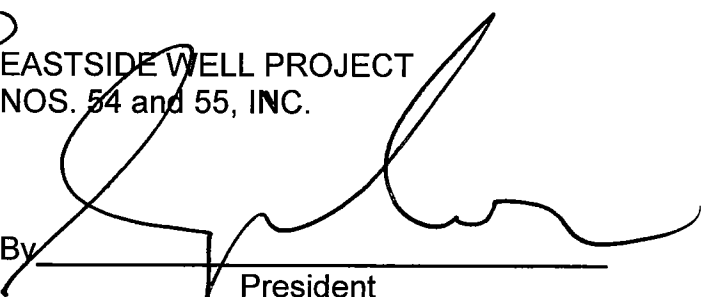
By \_\_\_\_\_  
Mayor, Board of Supervisors  
of the County of Los Angeles  
as the governing body thereof

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.  
County Counsel

By  \_\_\_\_\_  
Deputy

 EASTSIDE WELL PROJECT  
NOS. 54 and 55, INC.  
By  \_\_\_\_\_  
President



**COUNTY OF LOS ANGELES  
DEPARTMENT OF PUBLIC WORKS**

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (818) 458-5100

THOMAS A. TIDEMANSON, Director

ADDRESS ALL CORRESPONDENCE TO  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

April 12, 1990

IN REPLY PLEASE REFER TO FILE **W-0**

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

Honorable Board of Supervisors  
County of Los Angeles  
383 Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

4 5

APR 24 1990

Dear Supervisors:

LARRY J. MONTEILH  
EXECUTIVE OFFICER

WATER PIPELINE AGREEMENT BETWEEN LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 4, LANCASTER, AND  
EASTSIDE WELL PROJECT NO. 54 AND 55, INC.  
SUPERVISORIAL DISTRICT 5

RECOMMENDATIONS:

That your Board, as the governing body of Los Angeles County Waterworks District No. 4, Lancaster:

1. Approve the attached Negative Declaration.
2. Approve the Agreement with Eastside Well Project No. 54 and 55, Inc., which provides for the construction of approximately 59,000 feet of 36-inch diameter water supply transmission main and other appurtenances within the northern area of Lancaster.
3. Authorize the Director of Public Works to negotiate and approve any subsequent revisions to the time limits for any of the various phases of the project outlined in the Agreement.
4. Authorize the Director of Public Works to pay Eastside Well Project No. 54 and 55, Inc., for Los Angeles County Waterworks District No. 4's share of the improvements outlined in the Agreement.
5. Authorize the Auditor-Controller to pay invoices approved by the Director of Public Works up to \$1,500,000.
6. Authorize and instruct the Chairman of the Board to sign the Agreement.

dc: WWD #4-Reading  
WWD #4-Agreement Eastside  
Well Project  
No. 54 & 55  
ADM-WWD #4  
ADM-BDL 231  
GPH, JLS, PMS, HAC, ST, RG

Honorable Board of Supervisors  
April 12, 1990  
Page 2

7. Adopt a reporting program as specified in the project specifications to ensure compliance with the project changes and conditions adopted to mitigate or avoid significant effects on the environment.

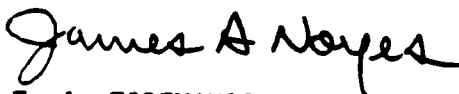
The Eastside Well Project No. 54 and 55, Inc., has been formed by Eliopoulos Realtors of Lancaster to construct major water system improvements to meet the water demands of proposed development within Waterworks District No. 4. Eliopoulos Realty is in the process of constructing several hundred homes in the Lancaster area. Additionally, a number of other developers in the District have indicated an interest in developing several thousand homes and various commercial and industrial projects in the Lancaster area. For the Waterworks District to be able to provide water service to these developments, additional water supply transmission mains are needed.

Eastside Well Project No. 54 and 55, Inc., has agreed to assume the lead role in constructing a major water supply transmission main along the northern portion of the District estimated to cost \$17,000,000. The District is proposing to contribute \$1,500,000 towards the project with the remaining \$15,500,000 to be financed by participating developers. Funds are available in the District No. 4 Accumulative Capital Outlay Fund to pay the District's share.

Under this Agreement the project will be constructed in four phases with the Eastside Well Project No. 54 and 55, Inc., establishing for each phase an escrow account controlled by the District and soliciting participation by other developers.

The Executive Officer-Clerk of the Board of Supervisors is requested to return one original and three (3) copies of the Agreement to the Department of Public Works, Waterworks and Sewer Maintenance Division, for filing purposes and transmittal to Eastside Well Project No. 54 and 55, Inc.

Respectfully submitted,



T. A. TIDEMANSON  
Director of Public Works

GJH:jsk (BDL231)

Enc.



THOMAS A. TIDEMANSON, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (818) 458-5100

ADDRESS ALL CORRESPONDENCE TO  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

### EXECUTIVE SUMMARY (3 Votes)

IN REPLY PLEASE  
REFER TO FILE

Cooperative Agreement between Los Angeles County Waterworks District No. 4, Lancaster, and Eastside Well Project No. 54 and 55, Inc., for the construction of 59,000 feet of large diameter transmission main to meet the water needs of projected development in the Lancaster area.

**REQUEST:** Sign the Agreement and approve the Negative Declaration.

**FISCAL IMPACT:** Construction of these facilities will provide additional source of supply to the Lancaster area and thus allow for increased water sales.

The total cost of the work is estimated at \$17,000,000 and under the Agreement, the District will participate with the payment of \$1,500,000 from its Accumulative Capital Outlay Fund with the balance being funded by developers.

**ISSUES:** If this major transmission main is not constructed, the ability to increase the amount of State Aqueduct water available to the Lancaster area will be severely limited and could result in reduced development in north Lancaster.

(BDL231A)  
4/12/90

EASTSIDE WELL PROJECT NO. 54 AND 55, INC.PIPELINE AGREEMENT

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 4, LANCASTER  
PIPELINE AGREEMENT WITH EASTSIDE WELL PROJECT NO. 54 AND 55, INC.

1. IDENTIFICATION

This Agreement (hereinafter "Agreement") is made by and between Eastside Well Project No. 54 and 55, Inc., 44230 Sierra Highway, Lancaster, California 93535, (hereinafter "Builder") and Los Angeles County Waterworks District No. 4, Lancaster, (hereinafter "District"), a public water District formed pursuant to Division 16 of the State Water Code, Post Office Box 1460, Alhambra, California 91802-1460.

2. RECITALS

- A. Builder is a corporation organized and existing under the laws of the State of California. Builder agrees to construct a water system and pipeline (hereinafter the "Project") for District to provide additional water transmission capabilities for both State Project water and well water for the Lancaster area. Builder intends to participate in the Project by purchasing approximately 750 Units, at an approximate cost of \$1,500,000. Builder is not a licensed contractor.
- B. District's analysis has shown that existing water supply facilities and water mains cannot properly service the growing water needs of Los Angeles County Waterworks District No. 4. As such, District has determined that additional water transmission mains are needed for the further development of single-family residences, shopping centers, schools and other residential, commercial, or industrial development in or adjacent to Los Angeles County Waterworks District No. 4 in Lancaster.
- C. Builder and District understand that other developers (hereinafter "Participants") have an anticipated need for additional water supplies and have expressed an interest in developing properties. Further, District understands that construction of the Project will be beneficial if constructed to provide access to water supplies for Participants' properties, (hereinafter referred to as the "Development") estimated to be 7,000 single-family residences or the equivalent in commercial/ industrial development. Builder intends to seek financial participation from Participants to meet the development cost of Project proposed in this Agreement.

District intends to participate in the Project by purchasing approximately 750 Units, at an approximate cost of \$1,500,000. Builder has offered to contract with Participants, collect funds from Participants and deposit said funds into an escrow account at a

financial institution, design the project, acquire rights of way, order materials and engage contractors to construct the Project as outlined in Recital D within existing public rights of way or property to be acquired for or by District, subject to approval of this Agreement by District's Board of Directors and approval of plans and specifications by the the Los Angeles County Director of Public Works or his designee.

- D. To complete the Project pursuant to District's plans and specifications will require the construction of approximately 59,000 feet of 36-inch diameter water supply transmission main, appropriate valving, tie-ins to other District mains and other appurtenances (see attached Exhibit A). Phase I will consist of two separate segments with the first segment beginning at Avenue J and 60th Street West and proceeding in a northerly manner to Avenue H and 60th Street West and the second segment beginning at Avenue I and 20th Street East and proceeding in a northerly manner to Avenue H and 20th Street East, then proceed in a westerly manner and ending at Avenue H and 10th Street East. Phase II will begin at Avenue H and 10th Street East and proceed in a westerly manner and end at Avenue H and 10th Street West. Phase III will begin at Avenue H and 10th Street West and proceed in a westerly manner and end at Avenue H and 30th Street West. Phase IV will begin at Avenue H and 30th Street West and proceed in a westerly manner and end at Avenue H and 60th Street West. The actual nature and extent of each Phase shall be agreed to by Builder and District prior to start of final contract drawings for that phase. As presently planned, the Project is to be constructed in four (4) distinct and individual phases.
- E. The proposed service area for the Project is all the lands within the District. Construction of the project is to take place on or under public and privately owned property. As such Builder, with the approval of District and on behalf of the District, shall make reasonable efforts to purchase the necessary rights of way to construct and maintain Project at a price and on terms reasonable in light of the fair market value of such rights of way. If Builder is unable to purchase on behalf of the District such rights of way, the District shall take what ever action is necessary to purchase such rights of way. To the extent permitted by law, the District shall exercise its power of eminent domain to acquire such rights of way.
- F. District imposes five types of water supply charges on new construction in its service areas. District shall credit the funds contributed to the Project by each Participant to that particular Participant's acreage charges and tank capacity unit charges. All other water supply charges shall be paid by each Participant to District when Participants seek to develop their property. The five types of water supply charges imposed on each Participant by District are set forth below:
1. **ACREAGE CHARGES** - Acreage charges are based on property usage and fire-flow protection requirements and are computed on a gross-acre basis (see attached Exhibit B). Participants will be given credit against Acreage Charges by participation in this Agreement. However, should the final costs for participation in this Agreement



be less than the combined total of Tank Capacity Unit Charges plus Acreage Charges, Participants shall pay the difference to the District. Acreage Charges are currently as follows for Waterworks District No. 4, Lancaster:

<u>Fire Flow at 20 psi</u>	<u>Duration</u>	<u>Charge Per Acre</u>	<u>(GPM)</u>
1251 to 1750	2 hours	\$1,459	(Normal Residential Requirement)
2751 to 3250	3 hours	\$1,646	(Lowest Commercial Requirement)
3751 to 4250	3 hours	\$1,772	(Median Commercial Requirement)
4251 to 5000	5 hours	\$1,897	(Highest Commercial Requirement)

Should these charges be increased by District during the time the water units are being sold, only Participants who purchase water units after the Acreage Charge has been increased shall pay the new rate.

2. **TANK CAPACITY UNIT CHARGES** - Tank Capacity Unit Charges are based on domestic meter demands and fire-flow projection requirements (see attached Exhibit C). These charges are calculated by multiplying Domestic Water Service Billing Units times Fire Flow Demand Units. Participants will be given credit against their Tank Capacity Unit Charges for their financial participation in constructing the Project but will be billed by the District for each Participant's pro-rata share of any balance due if the cost of construction of the Project exceeds the contributions of all the Participants.

Should these charges be increased by District during the time the water units are being sold, only Participants who purchase water units after the Tank Capacity Unit Charge has been increased shall pay the new rate.

3. **FRONTAGE CHARGES** - Frontage Charges are based on benefited front footage, required fire-flow and the size of the water main from which fire-flow is to be available (see attached Exhibit D). District shall accept fronting water mains to be installed as part of the Project by Builder or by Participants as part of their individual developments in lieu of the Frontage Charges.
4. **WATER SYSTEM ENGINEERING CHARGES** - These charges are made by the District to review developments, establish water system construction requirements, check plans and other documents needed for developers to carry out their construction work, inspect the construction work, process water service applications and inspect the installation of service connections and meters. These charges will be invoiced to Participants prior to plan check and inspection of their development and processing of water service applications.

5. **WATER SUPPLY CAPACITY CHARGES** - These charges are made by the District to pass on to system users the charges imposed upon the District by the Antelope Valley-East Kern Water Agency (hereinafter "Agency") to finance the construction of Agency's capital facilities which are needed to meet supplemental water supply demands created by District and its customers.

This charge shall be applied to any subdivision which has not received final approval of the subdivision map by the appropriate governmental entity on or before June 1, 1990 and to any commercial or industrial development which does not have a scheduled hearing date on or before June 1, 1990 for its conditional use permit or site approval.

This charge is set at \$1,592 per equivalent dwelling unit during calendar year 1990 and \$1,791 per equivalent dwelling unit during calendar year 1991. Agency is currently seeking to amend its Act with the State to allow Agency to invoice and collect Water Supply Capacity Charges for calendar year 1992 and beyond. Upon approval of said amendment, this charge will be collected by Agency and will no longer be collected by District.

- G. The District has determined the Project described in Recital D is required to provide additional water transmission capabilities for both State Project and well water to serve approximately 8,500 single-family residences or the equivalent in commercial/industrial development (7,000 units for Participants, 750 units for Builder and 750 units for District).
- H. Builder shall engage a private engineer, registered in the State of California (hereinafter the "Engineer") to prepare the construction plans for the Project. The plans, specifications, cost estimate and per unit charge for each phase of the Project shall be reviewed and approved by the District and the City of Lancaster prior to the commencement of construction.
- I. The contractor's work must be approved by the District as set forth herein below. Therefore, the District's Lancaster office shall be contacted prior to beginning any work on any phase of the proposed Project. Failure to do so may result in rejection of any work not inspected by District.
- J. Builder is to receive an administrative/overhead fee equal to eight percent (8%) of the total cost of the Project, which, as presently planned, is estimated to be \$17,000,000. This initial cost estimate is broken down as follows:
- |  |                 |
|--|-----------------|
| 1. Approximately 59,000 feet of 36-inch diameter water supply transmission main* | \$10,000,000.00 |
| 2. Southern Pacific Railroad and Highway 14 undercrossings                       | 800,000.00      |
| 3. Valving, tie-ins, and appurtenances   | 1,000,000.00    |

4. Engineering, permits and inspection	\$ 1,200,000.00
5. Legal, accounting, bond, insurance, etc.	400,000.00
6. Builder's administrative/overhead fee	1,360,000.00
7. Miscellaneous/contingencies	<u>2,240,000.00</u>
SUBTOTAL ESTIMATED COSTS**	\$17,000,000.00
DISTRICT CONTRIBUTION**	<u>1,500,000.00</u>
BUILDER'S & PARTICIPANT'S COSTS**	\$15,500,000.00

\* Includes cost to process and acquire needed rights of way to construct and maintain project.

\*\*Final costs to be determined from actual engineering, construction and other expenses and costs of Builder.

K. The initial cost estimated for Phase I of the Project outlined above is as follows:

1. Approximately 21,120 feet of 36-inch diameter water supply transmission main*	\$3,300,000.00
2. Valvings, tie-ins and appurtenances	300,000.00
3. Engineering, permits and inspection	300,000.00
4. Legal, accounting, bond, insurance, etc.	100,000.00
5. Builder's administrative/overhead fee	400,000.00
6. Miscellaneous/contingencies	<u>600,000.00</u>
SUBTOTAL ESTIMATED COSTS**	\$5,000,000.00
DISTRICT CONTRIBUTION**	<u>500,000.00</u>
BUILDER'S & PARTICIPANT'S COSTS**	\$4,500,000.00

\* Includes cost to process and acquire needed rights of way to construct and maintain project.

\*\*Final costs to be determined from actual engineering, construction and other expenses and costs of Builder.

## AGREEMENT

NOW, THEREFORE, intending to be legally bound, the parties hereto do covenant and agree as follows:

### SECTIONS

#### 1. PHASED CONSTRUCTION OF PROJECT

##### 1.1 Project Phases

The Project will be designed and constructed in four (4) distinct and individual phases as follows:

- A. Phase I will consist of two separate segments with the first segment beginning at Avenue J and 60th Street West and proceeding in a northerly manner to Avenue H and 60th Street West and the second segment beginning at Avenue I and 20th Street East and proceeding in a northerly manner to Avenue H and 20th Street East, then proceeding in a westerly manner and ending at Avenue H and 10th Street East.
- B. Phase II will begin at Avenue H and 10th Street East and proceed in a westerly manner and end at Avenue H and 10th Street West.
- C. Phase III will begin at Avenue H and 10th Street West and proceed in a westerly manner and end at Avenue H and 30th Street West.
- D. Phase IV will begin at Avenue H and 30th Street West and proceed in a westerly manner and end at Avenue H and 60th Street West.

The actual nature and extent of each phase shall be agreed to by the Builder and District prior to start of final contract drawings for that phase.

##### 1.2 Conditions on Construction

It is understood and agreed by both parties that the Project shall be designed and constructed in four (4) distinct and individual phases. As such, Builder shall not be obligated to begin performance of any phase of the Project, unless each of the following conditions has been satisfied for that particular phase of the Project:

- A. District Approval of Plans, Specifications, Cost Estimate and Per Unit Charge to the Participants

District shall approve Builder's plans, specifications, cost estimate and per unit charge to the Participants for each phase of the Project.

As such, Builder shall retain Engineer to design and prepare the construction plans and specifications for that particular phase of the Project to meet District's standards. Builder shall, as soon as possible, submit to District the plans, specifications, cost estimate and per unit charge to the Participants for that particular phase of the Project for District's approval. Upon District's approval of the plans, specifications, cost estimate and per unit charge to the Participants; Builder agrees to award a contract for construction for that particular phase of the Project to a properly licensed contractor (hereinafter referred to as "Contractor").

**B. Sufficient Participant Funds**

Builder shall not be obligated to begin construction on any phase of the Project until the amount of funds committed by District and contributed by the Builder and Participants into the escrow account described herein, and established for that particular phase of the Project, is equal to the cost estimate approved by District, as provided in Section 1.2A, for that particular phase of the Project.

As such, immediately after District's approval of the plans, specifications, cost estimate and per unit charge to the Participants for that particular phase of the Project; District shall notify Builder as to the number of water units which will be allocated by District for purchase by Builder and Participants for that particular phase of the Project.

**C. Easements and Rights of Way**

Builder, with the approval of District and on behalf of the District, shall make a reasonable effort to secure and purchase the necessary rights of way on which construction of that particular phase of the Project will occur and/or under which that particular phase of the Project will run, at a price and on terms reasonable in light of the fair market value of said rights of way. If Builder is unable to secure or purchase said rights of way on behalf of District, District shall acquire said rights of way through its power of eminent domain. If District is forced to exercise its power of eminent domain, all costs reasonably incurred by District to acquire said rights of way shall be returned to District from the Escrow Account established for that particular phase of the Project under Section 2.2. Builder's 8% administrative/overhead fee shall not apply to cost incurred by District to acquire said rights of way.

**1.3 Failure of Conditions on Construction to Occur**

If, for any reason, any of the conditions on construction described in Section 1.2 have not been satisfied within one (1) year from the date Builder submits its plans, specifications, cost estimate and

per unit charge to the Participants for that particular phase of the Project to District; Builder shall have the option to terminate the Agreement without constructing any of the remaining phases of the Project by notifying District in writing according to the provisions of Section 7 of this Agreement.

All funds contributed by Builder and Participants remaining in the escrow account for that particular phase of the Project, at the time this Agreement is terminated for non-occurrence of any of the conditions mentioned in Section 1.2, shall be redistributed to Builder and Participants in accordance with the terms of Section 2.3. Said redistribution shall occur after Builder has been reimbursed from the escrow account for all reasonable costs and expenses incurred by Builder up to the termination date.

## **2. CONSTRUCTION OF PROJECT AND OPENING OF ESCROW ACCOUNT**

### **2.1 Term**

This Agreement shall expire at the end of ten (10) years, beginning with the date this Agreement is entered into.

### **2.2 Opening of Escrow and Number of Participants**

Within forty-five (45) business days after District signs this Agreement, Builder will establish, at a reliable financial institution in California, an interest-bearing escrow account for Phase I of the Project by submission of a copy of this Agreement to the financial institution and by payment into said escrow account the financing arranged by Builder and Participants. The number of Participants for each particular phase of the Project will be determined by the Director of Public Works or his designee following Builder's submission to District of the plans, specifications, costs estimates and per unit charge to the Participants as provided for in Section 1.2A. District shall allocate to Builder to be sold by Builder to District, Builder, the Participants a total of 8,500 Units for the entire Project and a total of 2,500 Units for Phase I of the Project. Builder or its selected financial institution shall provide the District with a listing of Participants and their participating developments for each particular phase of the Project so that District may keep accurate records of water units sold for that phase of the Project.

Builder shall invoice District for costs incurred up to the number of water units to be purchased by District for that particular phase of the Project.

District shall commit to purchasing a total of 750 Units as follows:

- a. Phase I - District shall purchase 250 units at an approximate cost of \$500,000.
- b. Phase II - District shall purchase 167 units at an approximate cost of \$334,000.

- c. Phase III - District shall purchase 166 units at an approximate cost of \$332,000.
- d. Phase IV - District shall purchase 167 units at an approximate cost of \$334,000.

### 2.3 Construction Funds

All funds in the escrow account shall be used to pay the legal fees, rights of way processing and acquisition costs, construction costs, engineering, pavement repairs, permit fees, inspections, management fees, and any other reasonable charges incurred by Builder in the construction of this Project, and Builder's administrative/overhead fee, which shall equal eight percent (8%) of the total cost of that particular phase of the Project. Builder shall submit supporting invoices to the District for approval of disbursements from the Escrow Account and for District's share of the Project costs. All Participants who pay into the escrow account must provide District with proof of said payment by means of a receipt from the financial institution. Each receipt shall include the specific address(es) of properties for which escrow deposits have been made; as well as the total amount of escrow deposits which have been made; as well as Participant's address which Builder or Participants will then submit to District. Supporting invoices and such other appropriate documentation as may be required by District will be required from Builder before escrow can disburse funds. All payments from the Escrow Account or reimbursement authorizations for Builder's costs must be signed by the Builder's administrator and by either the Assistant Deputy Director in charge of the Waterworks Districts, the Director of Public Works or his designee. Any interest earned on the escrow account shall accrue to pay for any costs associated with the construction for that Project. Any residual funds remaining in the escrow account after crediting Builder and Participants, their share of the costs for that particular phase of the Project shall be returned to Builder and Participants based on the pro-rata contribution to the Project of Builder and each Participant. Builder's and each Participant's pro-rata contribution shall equal a fraction, the numerator of which shall equal the number of water units purchased by Builder or each Participant for that particular phase of the Project and the denominator of which shall equal the total number of water units to be purchased by Builder and Participants for that particular phase of the Project. The product realized by multiplying the fraction by the amount of funds remaining in the escrow account shall equal the amount of funds to be distributed to Builder and each Participant.

### 2.4 Escrow Instructions

Escrow instructions for each phase of the Project shall incorporate this Agreement and shall provide that Builder shall be entitled to withdraw Builder's 8% administrative/overhead fee for that particular phase of the Project from the escrow account as other costs are paid from the escrow account.

Escrow for any phase of the Project shall terminate upon: (1) the expiration of the ten (10) year term of this Agreement; (2) non-occurrence of any of the conditions on Builder's performance listed in Section 1.2 of this Agreement; or (3) completion by Builder and acceptance by District of that phase of the Project for which the escrow account was established. In the event of default by the Builder, as provided herein, escrow may terminate at the option of the District, after notice has been given in accordance with the terms of Section 7 herein. Escrow instructions shall provide that in the event District terminates the escrow due to Builder's default, any and all funds remaining in the escrow account shall become the property of the District and shall be used solely by District to construct all or any remaining portion of that particular phase of the Project. In the event of Builder's default, District shall assume full responsibility for the completion of the Project or for that particular phase of the Project. Builder's default shall not impair, infringe upon or compromise the Participant's right to receive a statement of water availability for the number of water units purchased by each Participant from the District under the terms of the Agreement.

### **3. BUILDER'S DUTIES**

#### **3.1 Cost of Project**

Builder shall pay all costs associated with each particular phase of the Project by using funds from the Escrow Account established for that particular phase as stipulated in Section 2 of this Agreement.

#### **3.2 Construction of Project**

Builder shall construct or cause to be constructed each and every phase of the Project as set forth in Recital D to the standards and specifications of the District.

#### **3.3 Performance of Work**

The contracts for each phase of the Project shall be between the Contractor and Builder. Builder shall cause Contractor to commence construction and diligently pursue the construction of each phase of the Project to completion. Builder shall be responsible for supervision of Contractor's work so that the Project is constructed expeditiously, in a workmanlike manner and in substantial accord with the plans, specifications and permit requirements. Builder will inform District's Lancaster office when construction on each phase of the Project is to commence so that District, its employees, representatives, or agents may review the construction and progress of work. Construction of each phase of the Project shall be deemed substantially complete when District has approved the construction and testing of that particular phase of the Project.

Builder shall make all reasonable efforts to insure that Contractor fully complies with all law regarding employment of aliens and



others, and that all their employees performing services hereunder meet the citizenship or alien status requirements contained in Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Contractor shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment and regulation as they currently exist and as they may be hereafter amended. Builder shall reasonably require Contractor to retain such documentation for all covered employees for the period prescribed by law and shall indemnify, defend, and hold harmless the County, its officers and employees from employer sanctions and any other liability which may be assessed against County in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

#### 3.4 Performance Date

Builder shall complete construction of the Project within ten (10) years, beginning with the date this Agreement is entered into.

In the event Builder's diligent performance of the construction of any phase of the Project is prevented or impaired by circumstances beyond its control and not foreseeable by Builder (e.g., labor, strike, inability to obtain materials because of strikes, etc.), Builder may apply to District for a reasonable extension of the completion date of the Project. Said extension shall not be unreasonably withheld by District.

#### 3.5 Change Orders

Builder shall make no change order relating to construction of the Project without prior written approval of the Los Angeles County Director of Public Works or his designee. If approved, additional time may be granted to the Builder so the change order may be properly completed.

#### 3.6 Dedication of Facilities

Upon completion of the construction and payment of all bills for construction, materials, engineering, pavement repairs, permits and related costs of each phase of the Project, Builder shall, in writing, dedicate that particular phase of the Project to the District. District shall accept the dedication of each phase of the Project and shall maintain and operate each phase of the Project after said acceptance at District's sole cost and expense.

#### 3.7 Default

In the event of Builder's default during any phase of the Project, District shall notify Builder in writing of the default and describe the nature of the default. Builder shall have thirty (30) days after Builder's receipt of District's notice of default to cure the default (or if such default cannot be cured within thirty (30) days,

Builder shall commence to cure the default within the 30-day period and diligently prosecute the cure to completion thereafter) to District's reasonable, good faith satisfaction. If Builder fails to cure (or commence to cure) the default, any and all funds remaining in the escrow account for that particular phase of the Project shall become the property of the District and shall be used solely by District to construct all or any remaining portion of that particular phase of the Project. Builder's default shall not impair, infringe upon or compromise the Participant's rights to receive a Statement of Water Availability for the number of Units purchased by each Participant from the District under the terms of this Agreement for that particular phase of the Project. Builder's default during any phase of the Project shall release Builder from any and all duty and obligation to plan, design or construct any of the remaining phases of the Project.

### **3.8 Water Distribution Plans for Builder's and Participant's Future Phased Developments**

Builder and Participants shall have water distribution plans for each individual Development prepared by a registered engineer and shall submit said plans showing the Fire Department's requirements to the District for review and approval. The plans shall be subject to all District charges for these developments minus those funds contributed by Participants to the costs of the Project to be constructed under this Agreement. These contributions shall be credited against each Participant's Tank Capacity Unit Charges and Acreage Charges. Upon completion of each phase of the Project, Builder will supply District with a full accounting of costs so that District may credit Participant's Tank Capacity and Acreage Charges and determine if any additional charges from Participants for each Participant's participating development are necessary.

## **4. DISTRICT DUTIES**

### **4.1 Insurance of Statement of Water Availability**

Once District has approved Builder's plans, specifications, cost estimate and per unit charge to the Participants for a particular phase of the Project, Builder shall immediately begin to solicit Participants for that particular phase of the Project.

As consideration for the Participant's contributions and Builder's contributions toward construction of each phase of the Project, District shall immediately issue to each Participant participating in that particular phase of the Project a conditional Statement of Water Availability. District's issuance of said Statement of Water Availability is contingent upon: (1) District's verification of Participant's participation in that particular phase of the Project; (2) Builder's completion and District's acceptance of that particular phase of the Project; (3) approval by District of Participant's development and said development's separate water distribution systems; and (4) payment in full by Participant to

District of all outstanding costs of construction, engineering and other related costs (including, but not limited to, any additional Tank Capacity Unit or Water Acreage Charges) for all water system improvements for Participants participating development.

5. USE OF MELLO-ROOS FINANCING

Builder shall have the option to use the provisions of the Mello-Roos Community Facilities Act of 1982, California Government Code 53000, et seq. (hereinafter "Mello-Roos Financing"), to finance, in whole or in part, any phase of the Project. Builder may exercise the option to use Mello-Roos financing at any time, provided District has been properly notified according to the provisions of this Agreement. District agrees to cooperate in good faith with Builder in establishing a Mello-Roos District and in assisting Builder in Builder's efforts to comply with the provisions of the Mello-Roos Community Facilities Act of 1982 with the understanding that neither the County of Los Angeles nor District will act as the local agency as defined in the Mello-Roos Community Facilities Act of 1982.

6. TERMINATION OF AGREEMENT

This Agreement shall terminate and be of no further force and effect when: (1) the Project and each phase thereof has been completed, inspected and accepted by the District; (2) Builder defaults under the terms of this Agreement; or (3) non-occurrence of any of the conditions on Builder's performance listed in Section 1.2 of this Agreement within one (1) year from the date Builder submits its plans, specifications and cost estimate and per unit charge for that particular phase of the Project to District.

7. NOTICE AND APPROVALS

Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party must be in writing and may be given by personal delivery, overnight mail courier, or by United States Registered or Certified Mail return receipt requested to the party to whom the Notice is directed at the address of the party set forth below or at any other address as the parties may later designate in writing:

TO BUILDER: Eastside Well Project No. 54 and 55, Inc.  
Attention: Pipeline Project  
44230 Sierra Highway  
Lancaster, California 93535

TO DISTRICT: Los Angeles County  
Waterworks District No. 4, Lancaster  
900 South Fremont Avenue, 9th Floor  
Alhambra, California 91803

## 8. ADMINISTRATION

Builder agrees that it shall promptly designate an Administrator, if Builder deems it necessary, to administer and carry out the provisions of this Agreement. Builder also agrees that it will not hold District liable for any actions or failures to act by Builder's Administrator, Engineer or employees.

## 9. FORCE MAJEURE

All parties hereto shall comply with the time limitations set forth in this Agreement provided, however, that said time limitations may be extended for a period or periods of time equal to any period of delay caused by strikes, lockouts, fire or other casualty, the elements or Acts of God, refusal or failure of governmental authorities or public utilities to grant necessary approvals, authorizations, and/or permits for the construction of the Project contemplated hereunder (the parties agreeing to use reasonable diligence to procure the same with dispatch) or other causes, unforeseen and beyond their reasonable control.

## 10. INSURANCE

Without limiting Builder's indemnification during the period of construction until completion of the Project and acceptance thereof by District, Builder shall make all reasonable efforts to provide or shall make reasonable efforts to cause its contractors or subcontractors to provide and maintain at its own expense the following forms and amounts of insurance set forth below. Such insurance shall be provided by insurer(s) satisfactory to the County Risk Management and evidence of such programs satisfactory to the District shall be delivered to the County Public Works Department on or before the commencement of any construction pertaining to this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that District is to be given written notice by Registered Mail at least thirty (30) days in advance of any modification or termination of any program of insurance:

Failure on the part of Builder to procure or maintain required insurance shall constitute a material breach of contract upon which District may immediately terminate or suspend this Agreement or purchase and charge the Builder for this insurance.

### 10.1 Liability

Such insurance shall be primary to and not contributing with any other insurance maintained by District or County of Los Angeles, shall name the Los Angeles County Waterworks District No. 4, Lancaster, and the County of Los Angeles as additional insureds, and shall include, but not be limited to:

1. Comprehensive General Liability Insurance endorsed for Premises-Operations, Products/Completed Operations, Explosions, Underground and Collapse, Contractual, Board Form Property Damage, and Personal Injury with a combined single limit of not less than \$1,000,000 per occurrence.
2. Comprehensive Auto Liability Insurance endorsed for all owned, non-owned, leased and hired vehicles with combined single limit of at least \$500,000 per occurrence.

#### 10.2 Worker's Compensation

A program of Worker's Compensation Insurance shall be maintained in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with a \$500,000 limit, covering all persons providing service on behalf of Builder and all risks to such persons under this Agreement.

#### 10.3 Property Damage

Builder's All Risk Insurance, including, flood coverage, covering the entire work against loss or damage shall be maintained. Insurance shall be an amount for the replacement cost of the subject construction and improvements and endorsed for broad form property damage. Deductibles not exceeding 5% of the construction cost and 10% for earthquake will be permitted.

#### 11. ATTORNEY'S FEES

Should any party or parties hereto institute any action or proceeding in court to enforce any provision hereof, for declaratory or similar relief or for damages by reason of alleged breach by another party of a provision of this Agreement, the prevailing party in such action be entitled to recover from the other party(s) its reasonable costs including attorney's fees and court costs.

#### 12. NO WAIVER

Failure of a party to insist upon strict and punctual performance of any covenant, conditions or other provisions of this Agreement or of any instrument or other writing herein provided for, shall not constitute a waiver of, or estoppel against, that party's right to require such performance. In addition, a waiver by any of the parties of any failure by another party to perform as required by any instrument or other writing provided for herein shall not be deemed to be waiver of any preceding or succeeding breach of the same or of any other covenant, condition or provision, including, without limitation, the time for performance thereof.

**13. GOVERNING LAW**

This Agreement and any instrument, certificate or other writing herein provided for shall be governed by and construed and enforced in accordance with the laws of the State of California and shall be interpreted according to their fair meaning and not in favor of or against any party.

**14. INVALIDITY**

Nothing contained in this Agreement or in any instrument, certificate or other writing herein provided for shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement or of any instrument, certificate or other writing herein provided for and any material statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the statute shall prevail. However, in the event that any such provision shall be invalid, illegal or unenforceable, the provisions so affected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements. The remainder of that provision and of the other provisions of this Agreement and of any instrument, certificate or other writing herein provided for shall continue in full force and effect and shall in no way be affected, impaired or invalidated, and the parties shall immediately employ their best efforts in good faith to negotiate a valid provision to substitute for the invalidated one.

**15. AMENDMENTS**

This Agreement may be amended, modified, superseded or canceled, and terms, conditions and covenants hereof may be waived, and agreements supplemental hereto may be made, only by written instrument executed by the parties, or, in the case of waiver, by the party waiving compliance in writing.

**16. COUNTERPARTS**

This Agreement and any amendment or supplement hereto, and any document or instrument to be executed and delivered hereunder, may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument; provided, however, that such counterparts, in the aggregate, shall have been executed by the parties.

**17. PARTIES IN INTEREST**

Each and every provision contained herein shall be binding upon and shall inure to the benefit of the parties, their respective assigns and successors in interest, whether said assigns and successors are private parties or public entities. Both parties shall require that their respective assigns and successors in interest are to be bound by and to uphold each and every provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, duly authorized by Eastside Well Project No. 54 and 55, Inc., on April 24th, 1990 and by the LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 4, LANCASTER on \_\_\_\_\_, 1990

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

4 5

APR 24 1990

*Larry J. Monteilh*  
LARRY J. MONTEILH  
EXECUTIVE OFFICER

EASTSIDE WELL PROJECT NO. 54 AND 55, INC.,

By: *[Signature]*  
President

By: *[Signature]*  
Secretary

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 4, LANCASTER

By: *[Signature]*  
CHAIRMAN OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF LOS ANGELES AS  
THE GOVERNING BODY THEREOF



APPROVED AS TO FORM:

DEWITT W. CLINTON  
County Counsel

ATTEST:

LARRY J. MONTEILH  
Board of Supervisors

By:

*[Signature]*  
Deputy

By:

*[Signature]*  
Deputy



**COUNTY OF LOS ANGELES**  
**DEPARTMENT OF PUBLIC WORKS**

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (818) 458-5100

THOMAS A. TIDEMANSON, Director

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

June 25, 1992

**ADOPTED**

IN REPLY PLEASE  
REFER TO FILE:

W-0

Honorable Board of Supervisors  
County of Los Angeles  
383 Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

74

JUN 30 1992

Dear Supervisors:

*Larry J. Monteilh*  
LARRY J. MONTEILH  
EXECUTIVE OFFICER

**WATER PIPELINE AGREEMENT BETWEEN LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 4, LANCASTER, AND  
EASTSIDE WELL PROJECT NO. 54 AND 55, INC.  
SUPERVISORIAL DISTRICT NO. 5  
3-VOTES**

**RECOMMENDATIONS:**

That your Board, as the governing body of Los Angeles County Waterworks District No. 4, Lancaster:

1. Approve Amendment No. 1 to Agreement 62819 with Eastside Well Project No. 54 and 55, Inc., and instruct the Chairman of the Board to sign the amendment.
2. Approve expenditure of and authorize the Director of Public Works to pay up to \$1,500,000 of Los Angeles County Waterworks District No. 4, Lancaster, Accumulative Capital Outlay Funds District's share of the improvements outlined in the Agreement and \$85,000 for lowering the 36-inch diameter water transmission main.
3. Authorize the Auditor-Controller to pay invoices approved by the Director of Public Works up to \$1,500,000 for work performed pursuant to Agreement 62819, as amended, and \$85,000 for the lowering of the 36-inch-diameter water transmission main.

On April 24, 1990, your Board approved an agreement between Los Angeles County Waterworks District No. 4, Lancaster, and Eastside Well Project No. 54 and 55, Inc., to construct approximately 59,000 feet of 36-inch-diameter water transmission main and appurtenances within the northern part of Lancaster at an estimated cost of \$17,000,000. The Agreement calls for the District to contribute \$1,500,000 toward the project with the remainder to be financed by private developers. The project was



Honorable Board of Supervisors  
June 25, 1992  
Page 2

to be constructed in four phases and the District was to contribute \$500,000 to Phase I, \$334,000 to Phase II, \$332,000 to Phase III and \$334,000 to Phase IV of the project.

Since that time, the State Department of Corrections has scheduled the construction of street improvements along the alignment of the water system improvement. By restructuring the phasing of the water system project and allowing the District to determine the contribution towards each phase, delays will be avoided and substantial savings will be realized. The amendment to the Agreement allows for the project to be constructed in five phases and authorizes the District to determine the timing of its \$1,500,000 contribution toward the project.

The City of Lancaster has informed us that they propose to construct a major storm drain that will cross the 36-inch-diameter water transmission main. Since the City has "prior rights" within the street right of way, the District will be required in the future to relocate its facilities to accommodate the City's drainage structure. The District will realize an estimated savings of \$250,000 by lowering the water transmission main at this time at an estimated cost of \$85,000 rather than waiting until the storm drain is constructed. There are sufficient funds in the District's Accumulative Capital Outlay Fund to finance the cost of this work.

The amendment has been approved by County Counsel. Please return one original and three copies of the amendment to this Department for further processing.

Respectfully submitted,

*James A Noyes*

T. A. TIDEMANSON  
Director of Public Works

GMP:jl  
W-0/BDL347

Enc.



THOMAS A. TIDEMANSON, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (818) 458-5100

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

### EXECUTIVE SUMMARY (3-Votes)

IN REPLY PLEASE  
REFER TO FILE: W-0

Amendment No. 1 to Agreement 62819 between Los Angeles County Waterworks District No. 4, Lancaster, and Eastside Well Project No. 54 and 55, Inc.

#### Request

Approve Amendment No. 1 to Agreement 62819 and authorize the payment of up to \$85,000 for the lowering of the 36-inch-diameter water transmission main to accommodate a future City storm drain.

#### Fiscal Impact

This Amendment will not have any fiscal impact other than to allow the District to determine the timing of the contribution of \$1,500,000 towards the multi-phase water system project. Lowering of the water main will cost the District \$85,000.

#### Issue

On April 24, 1990, the Board of Supervisors approved an agreement between County Waterworks District No. 4 and Eastside Well Project No. 54 and 44, Inc., to construct a major water transmission main in northern Lancaster at an estimated cost of \$17 million. The project was to be constructed in four phases. Under the terms of the Agreement, the District was to contribute \$1.5 million toward the project under a specified schedule as each phase is constructed. Since that time, the State Department of Corrections has scheduled construction of street improvements along the alignment of the water transmission main. Significant savings will be realized by coordinating this water system improvement with the State's street project.

It has also been called to the District's attention that the City proposes to construct a major storm drain across the alignment of the District water main. To accommodate the future construction of the storm drain, the District's water main must be lowered at District expense. The District will realize an estimated savings of \$250,000 by lowering the water transmission main at this time at an estimated cost of \$85,000 rather than waiting until the storm drain is constructed.

GMP:jl/BDL347

AMENDMENT TO AGREEMENT BETWEEN  
EASTSIDE WELL PROJECT NO. 54 AND 55, INC. AND  
LOS ANGELES COUNTY WATERWORKS DISTRICT  
NO. 4, LANCASTER

This Amendment is made to Agreement No. 62819 by and between Eastside Well Project No. 54 and 55, Inc. ("Builder") and Los Angeles County Waterworks District No. 4, Lancaster ("District") dated April 24, 1990.

Delete RECITALS D, F, G, H, I, J, and K, and adopt the following revised and additional RECITALS:

- D. To complete Project pursuant to District's plans and specifications will require the construction of approximately 59,000 feet of 36-inch diameter water supply transmission main, appropriate valving, tie-ins to existing District mains and other appurtenances (see attached Exhibit A). Phase I will begin at Avenue J and 60th Street West and proceed in a northerly manner and end at Avenue H and 60th Street West. Phase II will begin at Avenue H and 60th Street West and proceed in an easterly manner and end at Avenue H and 30th Street West. Phase III will begin at Avenue H and 30th Street West and proceed in an easterly manner to Avenue H and 10th Street West. Phase IV will begin at Avenue H and 10th Street West and proceed in an easterly manner and end at Avenue H and 10th Street East. Phase V will begin at Avenue H and 10th Street East and proceed in an easterly manner and end at Avenue I and 20th Street East, then proceed in a southerly manner and end at Avenue I and 20th Street East. The actual nature and extent of each phase shall be agreed to by Builder and District prior to the start of final contract drawings for that phase. As presently planned, Project shall be constructed in five distinct and individual phases.
- F. District imposes four types of water supply charges on new construction in its service areas. District shall credit the funds contributed to Project by Builder and Participants to Builder's and Participant's Acreage Charges and Tank Capacity Unit Charges. In the event Builder's and Participant's share of the cost of design and construction of Project is less than the total of Acreage Charges and Tank Capacity Unit Charges attributable to its Development, District reserves the right to bill Builder or Participant for the difference between its respective shares of the cost of Project and the total of Acreage Charges and Tank Capacity Unit Charges applicable to its respective Development. Acreage Charges and Tank Capacity Unit Charges for Participants shall be those in effect at the time of Participant's execution of its sub-agreement with Builder. Acreage Charges and Tank Capacity Unit Charges for Builder shall be those in effect at the time Builder funds the purchase of its units. All other applicable water supply charges shall be paid by Builder and Participants to District when Builder or Participant seeks to develop its Development. The four types of water supply charges imposed by District are as set forth below:

1. **ACREAGE CHARGES** - Acreage Charges are based on property usage and fire-flow protection requirements and are computed on a gross-acre basis (see attached Exhibit B). Builder and Participants will receive credit against Acreage Charges for financial participation in the design and construction of Project.
  2. **TANK CAPACITY UNIT CHARGES** - Tank Capacity Unit Charges are based on domestic meter demands and fire-flow protection requirements (see attached Exhibit C). These charges are calculated by multiplying Domestic Water Service Billing Units times Fire-Flow Demand Units. Builder and Participants will receive credit against Tank Capacity Unit Charges for financial participation in the design and construction of Project.
  3. **FRONTAGE CHARGES** - Frontage Charges are based on benefitted front footage, required fire flow and the size of the water main from which fire flow is to be available (see attached Exhibit D). District shall accept fronting water mains to be installed by Builder or Participants as part of Developments in lieu of its Frontage Charges.
  4. **WATER SYSTEM ENGINEERING CHARGES** - These charges are made by District to review developments, establish water system construction requirements, check plans and other documents needed for developers to carry out their construction work, inspect the construction work, process water service applications and inspect the installation of connections and meters. These charges will be invoiced to Builder and Participants prior to plan check and inspection of its Development and processing of water service applications.
- G. The Antelope Valley-East Kern Water Agency (hereinafter "AVEK") imposes a charge (called the Facility Capacity Fee) upon District customers to finance the construction of AVEK's capital facilities which are needed to meet supplemental water supply demands created by District and its customers. This charge shall be applied to any subdivision which had not received final approval of the subdivision map by the appropriate governmental entity on or before June 1, 1990, and to any commercial or industrial development which did not have a scheduled hearing date on or before June 1, 1990 for its conditional use permit or site approval.
- This charge was set at \$1,791 per water unit during calendar year 1991 and \$1,850 per water unit for the 1992 calendar year. AVEK will collect Facility Capacity Fees.
- H. District has determined Project described in RECITAL D is required to provide additional water transmission capabilities for both State Water Project and well water to serve approximately 8,500 single family residences or the equivalent in commercial/industrial development (7,000 units for Participants, 750 units for Builder and 750 units for District).
- I. Builder shall engage an engineer, registered in the State of California (hereinafter "Engineer"), to prepare the construction plans for Project. The plans, specifications, cost estimate, and per unit charge for each phase of Project shall be reviewed and approved by District prior to the commencement of construction.

J. The contractor's work must be approved by District as set forth herein. Therefore, District's Lancaster office shall be contacted prior to beginning any work on Project. Failure to do so may result in rejection of any work not inspected by District.

K. Builder is to receive an administrative/overhead fee equal to eight percent (8%) of the total cost of Project, excluding land and rights-of-way costs. Said administrative/overhead fee shall include Builder's cost of Project administration, accounting and inspection to ensure compliance with District approved construction plans and specifications. The estimated cost of Project is as follows:

1. 59,000 + feet of 36-inch diameter steel water supply transmission main	\$ 10,000,000
2. Railroad and Freeway undercrossings	800,000
3. Valving, tie-ins and appurtenances	1,200,000
4. Engineering (@10%)	1,200,000
5. Bonds, insurance permits, legal, etc.	500,000
6. Contingencies (@ 15%)	<u>1,800,000</u>
Estimated construction cost	\$ 15,500,000
7. Administrative/overhead fee @ 8% (including Builders inspection and accounting)	1,240,000
8. Land and Rights-of-Way	<u>260,000</u>
Estimated total cost of Project*	\$ 17,000,000

\* Final costs to be determined from actual construction, engineering, and property expenditures.

L. Summary of costs and units:

	<u>Units**</u>	<u>Cost</u>
District	750	\$ 1,500,000
Builder	750	\$ 1,500,000
Participants	<u>7,000</u>	<u>\$14,000,000</u>
Total	8,500	\$17,000,000

\*\* One unit is equal to one District billing unit, which is the equivalent of a three quarter inch diameter metered service (typically one-single family residence).

Delete SECTIONS 1.1, 1.2, 1.3, 2.2, 2.3, 2.4, and 3.7 and adopt the following revised SECTIONS:

**1.1 Project Phases**

The Project will be designed and constructed in five (5) distinct phases as follows:

- A. Phase I will begin at Avenue J and 60th Street West and proceed in a northerly manner and end at Avenue H and 60th Street West.
- B. Phase II will begin at Avenue H and 60th Street West and proceed in an easterly manner and end at Avenue H and 30th Street West.
- C. Phase III will begin at Avenue H and 30th Street West and proceed in an easterly manner and end at Avenue H and 10th Street West.
- D. Phase IV will begin at Avenue H and 10th Street West and proceed in an easterly manner and end at Avenue H and 10th Street East.
- E. Phase V will begin at Avenue H and 10th Street East and proceed in an easterly manner to Avenue H and 20th Street East, then proceed in a southerly manner and end at Avenue I and 20th Street East.

The actual nature and extent of each phase shall be agreed to by Builder and District prior to the start of final contract drawings for that phase.

**1.2 Conditions on Construction**

Builder shall not be obligated to begin performance of any phase of Project, unless each of the following conditions has been satisfied for that particular phase of Project.

**A. District Approval of Plans, Specifications, Cost Estimates, and Per Unit Charge**

District shall approve Builder's plans, specifications, cost estimates, and per unit charge for each phase of Project. Builder shall retain Engineer to design and prepare the construction plans and specifications for each phase of Project to meet District standards. Builder shall submit, as soon as practicable the plans, specifications, cost estimates, and per unit charge for each phase of Project to District for approval. Upon approval, Builder agrees to award a contract for construction of the particular phase of Project to a contractor properly licensed in California (hereinafter "Contractor").

## **B. Funding**

The amount of funds committed by District and contributed by Builder and Participants to the escrow account is sufficient to pay the costs of that phase of Project and that District and Builder agree that the amount of funds in the escrow account is adequate to begin construction.

## **C. Easements and Rights-of-Way**

Builder, with the approval of District and on behalf of District, shall make a diligent effort to secure and purchase the necessary rights-of-way to construct Project. The price and terms of any acquisitions may not exceed the fair market value of the property at the time of purchase and such price and terms shall be subject to District's prior approval. If Builder, after making a diligent effort, is unable to secure or the purchase necessary rights-of-way for and on behalf of District, District may exercise its powers of eminent domain to acquire said rights. If District must exercise its powers of eminent domain, all costs incurred by District shall be reimbursed to District from Project escrow account. Builder is not entitled to its 8% administrative/overhead fee on the acquisition costs reimbursed to District.

### **1.3 Failure of Conditions on Construction to Occur**

If, for any reason, any of the conditions on construction described in Section 1.2 have not been satisfied within one (1) year from the date Builder submits its plans, specifications, cost estimate and per unit charge to Participants for that particular phase of Project to District; Builder shall have the option to terminate Agreement without constructing any of the remaining phases of Project by notifying District in accordance with Section 7 of Agreement.

All funds contributed by Builder and Participants remaining in the escrow account for that particular phase of Project, at the time Agreement is terminated for non-occurrence of any of the conditions in Section 1.2, shall be distributed to Builder and Participants in accordance with Section 2.3. Said distribution from the escrow account shall occur only after all Project costs incurred by Builder or any other party, up to the time of termination, have been reimbursed.

### **2.2 Opening of Escrow Account and Recordation of Water Unit Sales**

Within forty-five (45) business days after District signs Agreement, Builder shall establish an escrow account (hereinafter "Escrow Account"), requiring that funds be deposited in an interest bearing account at a reliable California financial institution, by submitting to the financial institution a copy of Agreement. Builder shall deposit into Escrow Account all Builder, District, and Participant funds, collected from the sale of water units, for the construction of Project or any phase of Project. District shall allocate to Builder to be sold by Builder to Builder, District, and Participants a total of 8,500 water units for Project. Builder and District shall jointly determine the number of water units available for each phase of Project. Builder and Escrow Account shall provide District with monthly statements detailing the activity of Escrow Account including a listing of Participants, which shall list the number of water units and associated properties for which they were purchased, so that District may keep accurate records of water units sold for each phase of Project.

### 2.3 Construction Funds

Funds in Escrow Account shall be used to pay the construction costs, engineering fees, rights-of-way acquisition costs, permit fees, legal fees, pavement repair costs, and other reasonable charges incurred in construction of Project. Builder's eight percent (8%) administrative/overhead fee, which pays for Builders cost of Project administration, accounting and inspection to ensure compliance with District approved construction plans and specifications, shall also be paid from Escrow Account and shall be calculated based on the actual costs of Project, excluding land and rights-of-way costs. Builder shall submit supporting invoices to District for approval prior to disbursements from Escrow Account. Builder shall invoice District for its share of Project costs, which shall not exceed \$1,500,000. All Participants shall provide District with proof of payment to Escrow Account by means of a receipt which shall include the specific address(es) of properties for which escrow deposits have been made as well as Participant's address. All disbursements from Escrow Account must be signed by Builder's administrator and the Assistant Deputy Director in charge of the Waterworks Districts, the Los Angeles County Director of Public Works or his designee. Any interest earned on funds held in Escrow Account shall accrue to pay for Project construction costs. District shall permit the use of District's tax-free federal identification number to allow Escrow Account to retain accrued interest without payment of income tax. Any funds remaining in Escrow Account, after crediting Builder, District, and Participants their share of the costs for that phase of Project, shall be returned to Builder, District, and Participants based on their pro-rata contribution to that phase of Project. Builder's, District's, and Participant's pro-rata contribution shall equal a fraction, the numerator of which shall equal the number of water units purchased by Builder, District, or Participant for that particular phase of Project and the denominator of which shall equal the total number of water units to be purchased by Builder, District, and participants for that particular phase of Project. The product realized by multiplying the fraction by the amount of funds remaining in Escrow Account shall equal the amount of funds to be distributed to Builder, District, and Participant.

### 2.4 Escrow Instructions

Escrow instructions for each phase of Project shall incorporate Agreement and shall provide that Builder shall be entitled to withdraw Builders 8% administrative/overhead fee for each phase of Project as other costs are disbursed from Escrow Account for that phase of Project. Escrow for any phase of Project shall terminate upon: (1) the expiration of the ten-year term of Agreement; (2) non-occurrence of any of the conditions on Builder's performance per Section 1.2 of Agreement; or (3) completion by Builder and acceptance by District of the phase of Project for which Escrow Account was established. In the event of default by Builder, as defined in Section 3.7 of Agreement, escrow may terminate at the option of District, after notice has been given in accordance with the terms of Section 7 of Agreement. Escrow instructions shall provide that, in the event District terminates escrow due to Builder's default, any and all funds remaining in Escrow Account shall become the property of District and shall be used solely by District to construct any and all remaining portions of the phase of Project for which Escrow Account was established. Builder's default shall not impair, infringe upon or compromise Builder's or Participant's right to receive a statement of water availability for the number of water units purchased by Builder or Participants under Agreement.



### **3.7 Default**

In the event of Builders default during any phase of Project, District shall notify Builder in writing of the default and describe the nature of the default. Builder shall have thirty (30) days after receipt of District's notice of default to cure the default (or if default cannot be cured within thirty (30) days, Builder shall commence to cure the default within the 30 day period and diligently prosecute the cure to completion) to District's satisfaction. If Builder fails to cure (or commence to cure) the default, any and all funds remaining in Escrow Account for that phase of Project shall become the property of District and shall be used solely by District to construct any and all remaining portions of that phase of Project. Builder's default shall not impair, infringe upon or compromise Builder or Participants right to receive a statement of water availability for the number of water units purchased by Builder or Participant under Agreement. Builders default during any phase of Project shall release Builder from any and all duty and obligation to plan, design, and construct the remaining phases of Project.

IN WITNESS WHEREOF, the parties hereto have caused Agreement to be executed by their respective officers, duly authorized by Eastside Well Project No. 54 and 55, Inc. on \_\_\_\_\_, 1992, and by the Los Angeles County Waterworks District No. 4, Lancaster on \_\_\_\_\_, 1992.

EASTSIDE WELL PROJECT NO.  
54 AND 55, INC.

By [Signature]  
President

By [Signature]  
Secretary

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 4, LANCASTER

[Signature]

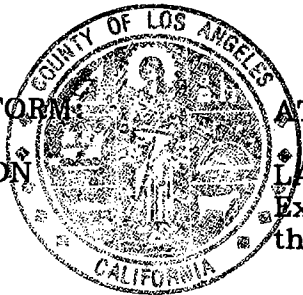
By [Signature]  
~~CHAIRMAN, PRO TEM~~ Chairman of the Board of Supervisors  
of the County of Los Angeles  
as the governing body thereof

APPROVED AS TO FORM

DE WITT W. CLINTON  
County Counsel

ATTEST:

LARRY J. MONTEILH  
Executive Officer-Clerk of  
the Board of Supervisors



By [Signature]  
Deputy

By [Signature]  
Deputy

GMP:dh  
3cs:WW5360.gmp

ADOPTED

74

JUN 30 1992

[Signature]  
LARRY J. MONTEILH  
EXECUTIVE OFFICER

CAT. NO. NN00737  
TO 1945 CA (8-84)  
(Corporation)

 **TICOR TITLE INSURANCE**

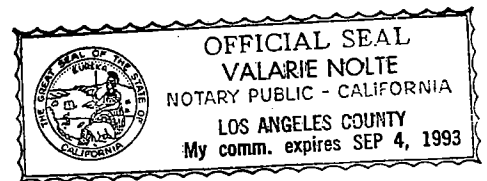
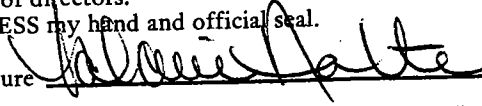
STATE OF CALIFORNIA  
COUNTY OF Los Angeles } ss.

On June 17, 1992 before me, the undersigned, a Notary Public in and for  
said State, personally appeared Andrew J. Eliopoulos  
personally known to me or proved to me on the basis  
of satisfactory evidence to be the person who executed  
the within instrument as the  
President, and -----

----- personally known to me or  
proved to me on the basis of satisfactory evidence to be  
the person who executed the within instrument as the  
----- Secretary of the Corporation  
that executed the within instrument and acknowledged  
to me that such corporation executed the within instru-  
ment pursuant to its by-laws or a resolution of its  
board of directors.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

↑  
STAPLE HERE  
↓



HARRY W. STONE, Director

**COUNTY OF LOS ANGELES**  
**DEPARTMENT OF PUBLIC WORKS**

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

March 16, 2000

IN REPLY PLEASE  
REFER TO FILE: W-0

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

**34**

**APR 04 2000**

*Violet Varona-Lukens*  
VIOLET VARONA-LUKENS  
EXECUTIVE OFFICER

Dear Supervisors:

**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ANTELOPE VALLEY  
WATER SERVICE AGREEMENT  
SUPERVISORIAL DISTRICT 5  
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD:**

As the governing body of the Los Angeles County Waterworks District No. 40, Antelope Valley:

Approve Amendment 2 to the Water Service Agreement (Agreement No. 62819) between the Waterworks District (District) and Eastside Well Project No. 54 and 55, Inc. (Builder). This Amendment extends the time period during which the Builder is required to perform and establishes the time period during which the District will honor the developer fee credits created in exchange for the water system improvements constructed, eliminates the Builder's option to use Mello-Roos financing, and adds a Builder indemnity clause. Correction of addresses, clarification of eminent domain wording and changes to District name references are also accommodated.

**PURPOSE OF RECOMMENDED ACTION**

This Amendment extends the time period during which the Builder is required to perform and establishes the time period during which the District will honor the developer fee credits created in exchange for the water system improvements constructed.

The Honorable Board of Supervisors  
March 16, 2000  
Page 2

### **JUSTIFICATION**

The extension of time was requested by the Builder to allow for the completion of the construction of major water system improvements delineated in the original Agreement which are needed to serve development in the north Lancaster area. The facilities are required to ensure the City of Lancaster can pursue development in conformance with its Fox Field Specific Plan.

### **FISCAL IMPACT**

None.

### **FINANCING**

All funding for the construction of the remaining water system improvements will be provided by private developers.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

This Amendment is by and between the Los Angeles County Waterworks District No. 40, Antelope Valley, a public waterworks district formed pursuant to Division 16 of the State Water Code as successor in interest to the Los Angeles County Waterworks District No. 4, Lancaster, and Eastside Well Project No. 54 and 55, Inc. The original Agreement was adopted by your Board on April 24, 1990 and amended on June 30, 1992. This Amendment has been approved as to form by County Counsel.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

None.

The Honorable Board of Supervisors  
March 16, 2000  
Page 3

**CONCLUSION**

Please return the two approved copies of the Amendment marked District and Builder to Public Works. The copy marked County is for your files.

Respectfully submitted,



HARRY W. STONE  
Director of Public Works

GMP:dh  
BDL2000

Enc. 3

cc: Chief Administrative Officer  
County Counsel

## AMENDMENT NO. 2

### AMENDMENT TO AGREEMENT BETWEEN EASTSIDE WELL PROJECT NO. 54 AND 55, INC., AND LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ANTELOPE VALLEY

This Amendment is made to Agreement No. 62819 dated April 24, 1990, as amended, by and between Eastside Well Project No. 54 and 55, Inc., ("Builder") and Los Angeles County Waterworks District No. 40, Antelope Valley, the successor in interest to Los Angeles County Waterworks District No. 4, Lancaster, ("District").

Delete SECTIONS 1.2C, 2.1, 2.2, 2.3, 2.4, 3.4, 3.6, 5, 6, 7, and 10.1, and adopt the following revised SECTIONS:

#### 1.2 Conditions on Construction

##### C. Easements and Rights-of-Way

"Builder, with the approval of District and on behalf of District, shall make a diligent effort to secure and purchase the necessary rights-of-way to construct Project. The price and terms of any acquisitions may not exceed the fair market value of the property at the time of purchase and such price and terms shall be subject to District's prior approval. If Builder, after making a diligent effort, is unable to secure or to purchase the necessary rights-of-way for and on behalf of District, District may exercise its powers of eminent domain to acquire said rights. Developer acknowledges that the determination as to whether or not the property is to be acquired by eminent domain is within the discretion of the Governing Body of the District and that, in order to proceed with an eminent domain action, the Governing Body must conduct a public hearing and adopt a resolution of necessity in accordance with CCP 1245.210 et. seq., and that the Governing Body, in its discretion, may determine not to adopt a resolution of necessity to exercise its power of eminent domain. In the event the Governing Body does not adopt such a resolution, Builder shall have no recourse against the District. If the District does exercise its powers of eminent domain, all costs incurred by District shall be reimbursed to District from the Project escrow account. Builder is not entitled to its 8 percent administrative/overhead fee on the acquisition costs reimbursed to District."

#### 2.1 Term

This Agreement shall expire on April 24, 2010, twenty (20) years from the date this Agreement was entered into, unless earlier terminated pursuant to Section 6 of this Agreement.

District shall allow credit for funds contributed to the Project by Builder and Participants toward Builder's and Participant's Acreage Charges and Tank Capacity Unit Charges for a period not to exceed forty (40) years from April 24, 1990, the date this Agreement was entered into. Water units created under this Agreement shall be valid until April 24, 2030, forty (40) years from the date this Agreement was entered into, or until the credit toward District's Acreage Charge and Tank Capacity Unit Charge has been allowed, whichever occurs first.

## 2.2 Opening of Escrow Account and Recordation of Water Unit Sales

Within forty-five (45) business days after District signs Agreement, Builder shall establish an escrow account (hereinafter "Escrow Account"), requiring that funds be deposited in an interest bearing account at a reliable California financial institution, by submitting to the financial institution a copy of Agreement. Builder shall deposit into Escrow Account all Builder, District, and Participant funds, collected from the sale of water units, for the construction of the Project or any phase of the Project. District shall allocate to Builder to be sold by Builder to Builder, District, and Participants up to a total of 8,500 water units for the Project. Builder and District shall jointly determine the number of water units available for each phase of the Project. Builder and Escrow Account shall provide District with monthly statements detailing the activity of Escrow Account including a listing of the Participants, which shall list the number of water units and associated properties for which they were purchased, so that District may keep accurate records of water units sold for each phase of the Project. If water units are purchased for future resale, listing must so state and indicate owner of record and the number of water units so purchased.

## 2.3 Construction Funds

Funds in Escrow Account shall be used to pay the construction costs, engineering fees, rights-of-way acquisition costs, permit fees, legal fees, pavement repair costs, and other reasonable charges incurred in construction of the Project. Builder's eight percent (8%) administrative/overhead fee, which pays for Builders cost of the Project administration, accounting, and inspection to ensure compliance with District approved construction plans and specifications, shall also be paid from Escrow Account and shall be calculated based on the actual costs of the Project, excluding land and rights-of-way costs. Builder shall submit supporting invoices to District for approval prior to disbursements from Escrow Account. Builder shall invoice District for its share of the Project costs, which shall not exceed \$1,500,000. All Participants shall provide District with proof of payment to Escrow Account by means of a receipt which shall include the specific address(es) of properties for which escrow deposits have been

made as well as Participant's address or if purchased for future resale, receipt must indicate owner of record and the number of water units purchased. All disbursements from Escrow Account must be signed by Builder's administrator and the Assistant Deputy Director in charge of the Waterworks Districts, the Los Angeles County Director of Public Works or his designee. Any interest earned on funds held in Escrow Account shall accrue to pay for the Project construction costs. District shall



permit the use of District's tax-free federal identification number to allow Escrow Account to retain accrued interest without payment of income tax. Any funds remaining in Escrow Account, after crediting Builder, District, and Participants their share of the costs for that phase of the Project, shall be returned to Builder, District, and Participants based on their pro-rata contribution to that phase of the Project. Builder's, District's and Participant's pro-rata contribution shall equal a fraction, the numerator of which shall equal the number of water units purchased by Builder, District, or Participant for that particular phase of the Project and the denominator of which shall equal the total number of water units to be purchased by Builder, District, and Participants for that particular phase of the Project. The product realized by multiplying the fraction by the amount of funds remaining in Escrow Account shall equal the amount of funds to be distributed to Builder, District, and Participants.

#### 2.4 Escrow Instructions

Escrow instructions for each phase of the Project shall incorporate Agreement and shall provide that Builder shall be entitled to withdraw Builder's 8 percent administrative/overhead fee for each phase of the Project as other costs are disbursed from Escrow Account for that phase of the Project. Escrow for any phase of the Project shall terminate upon: 1) the expiration of the twenty-year term of Agreement; 2) non-occurrence of any of the conditions on Builder's performance per Section 1.2 of Agreement; or 3) completion by Builder and acceptance by District of the phase of the Project for which Escrow Account was established. In the event of default by Builder, as defined in Section 3.7 of Agreement, escrow may terminate at the option of District, after notice has been given in accordance with the terms of Section 7 of Agreement. Escrow instructions shall provide that, in the event District terminates escrow due to Builder's default, any and all funds remaining in Escrow Account shall become the property of District and shall be used solely by District to construct any and all remaining portions of the phase of the Project for which Escrow Account was established. Builder's default shall not impair, infringe upon or compromise Builder's or Participant's right to receive a statement of water availability for the number of water units purchased by Builder or Participants under Agreement.

#### 3.4 Performance Date

Builder shall complete construction of the Project on or before April 24, 2010, twenty (20) years from the date this Agreement was entered into.

In the event Builder's diligent performance of the construction of the Project is prevented or impaired by circumstances beyond its control and not foreseeable by Builder (e.g., labor dispute, inability to obtain materials because of strikes, etc.), Builder may apply to District for a reasonable extension of the completion date of the Project. Said extension shall not be unreasonably withheld by District.

### 3.6 Dedication of Facilities

Upon completion of the construction and payment of all bills for construction, materials, engineering, pavement repairs, permits, and related costs of each phase of the Project, Builder shall, in writing, dedicate that particular phase of the Project to the District. District shall accept the dedication of each phase of the Project and shall maintain and operate each phase of the Project after said acceptance at District's sole cost and expense.

Nothing in Agreement shall be construed as limiting District's usage of the Project to any specific single-family residential or commercial/industrial development. District may permit access to the Project by any person who pays all applicable District charges, through use of a water unit or otherwise.

### 5. Alternative Construction Financing

District has no responsibility toward the repayment of any funds Builder or Participant may use to construct, in whole or in part, the Project or any phase of the Project. This Agreement does not create any third party beneficiary rights.

### 6. Termination of Agreement

This Agreement shall terminate and be of no further force and effect upon the occurrence of any of the following conditions: 1) The Project and each phase thereof has been completed, inspected, and accepted by the District; 2) Builder defaults under the terms of this Agreement; or 3) Any of the conditions on Builder's performance listed in Section 1.2 of this Agreement have not been satisfied within one (1) year from the date Builder submits its plans, specifications, and cost estimate and per unit charge for that particular phase of the Project to District. Note that any water capacity units created under this Agreement shall not terminate with this Agreement, but shall only terminate in accordance with Section 2.1.

### 7. Notice and Approvals

Any approval, disapproval, demand, document, or other notice ("Notice") which either party may desire to give to the other party must be in writing and may be given by personal delivery, overnight mail courier, or by United States Registered or Certified Mail return receipt requested from the party to whom the Notice is directed at the address of the party set forth below or at any other address as the parties may later designate in writing.

TO BUILDER:

Eastside Well Project No. 54 and 55, Inc.  
Attention: Pipeline Project  
Post Office Box 5089  
Lancaster, CA 93539

TO DISTRICT:

Los Angeles County  
Waterworks District No. 40, Antelope Valley  
900 South Fremont Avenue, 9th Floor  
Alhambra, CA 91803

#### 10.1 Liability

Such insurance shall be primary to and not contributing with any other insurance maintained by District or County of Los Angeles, shall name the Los Angeles County Waterworks District No. 40, Antelope Valley, and the County of Los Angeles as additional insurers, and shall include, but not be limited to:

1. Comprehensive General Liability insurance endorsed for Premises-Operations, Products/Completed Operations, Explosions, Underground and Collapse, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than \$1,000,000 per occurrence.
2. Comprehensive Auto Liability insurance endorsed for all owned, non-owned, leased, and hired vehicles with combined single limit of at least \$500,000 per occurrence.

#### 10.4 Builder Indemnification

Builder agrees to indemnify, defend, and save harmless District and the County of Los Angeles, and District agents, officers, and employees, from and against any and all liability, expense (including defense costs and legal fees) and claims for damages of any nature whatsoever, including, but not limited to claims for bodily injury, death, or property damage arising from any negligent act or omission, or reckless or willful misconduct of Builder in connection with the construction of the Project or from workers' compensation claims made by employees of Builder. The foregoing indemnification does not apply in the event that it is determined that the injury or damage in question was caused by the negligent act or omission, or reckless or willful misconduct of District, the County of Los Angeles or any of the agents, officers, or employees of either.

IN WITNESS WHEREOF, the parties hereto to have caused Agreement to be executed by their respective officers, duly authorized by Eastside Well Project No. 54 and 55, Inc., on 3-13-, 2000, and by the Los Angeles County Waterworks District No. 40, Antelope Valley on 4-4, 2000.

EASTSIDE WELL PROJECT NO. 54  
AND 55, INC

By

President

By

Secretary

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40, ANTELOPE VALLEY

By

Chairman, Board of Supervisors of the County  
of Los Angeles as the governing body thereof



ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer of the Board  
of Supervisors of the County of  
Los Angeles

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

**34**

**APR 04 2000**

By

Lephia G. Cillalobos  
Deputy

Violet Varona-Lukens  
VIOLET VARONA-LUKENS  
EXECUTIVE OFFICER

APPROVED AS TO FORM:

LLOYD W. PELLMAN  
County Counsel

By

Lloyd W. Pellman  
Deputy

# ACKNOWLEDGMENT

State of California

County of Los Angeles

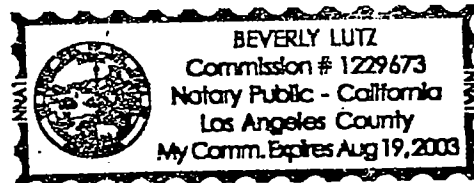
} ss.

On March 13, 2000 before me, Beverly Lutz (here insert name)

Notary Public, personally appeared Andrew J. Eliopoulos

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me all that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature

Beverly Lutz

(affix seal)